



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/546,264 | 04/10/2000 | William J. Beyda | OOP7571US | 3052 |

7590 03/08/2004
Siemens Corporation
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

EXAMINER

BLOUNT, STEVEN

ART UNIT PAPER NUMBER

2661

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/546,264

Applicant(s)

BEYDA ET AL.

Examiner

Steven Blount

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/8/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9, 11-20, 22-31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Applicants Admitted Prior Art (hereinafter referred to as AAPA) in view of U.S. patent 6,587,457 to Mikkonen.

With regard to claim 1, AAPA teaches, in figure 1B, a telecommunications system comprising an Ethernet lan with an IP voice communication stack, a QoS Ethernet layer 115, and also admits the problem in the art associated with having to modify application programs "in addition to standard H.323 commands in order to invoke the required QoS". AAPA does not, however, teach a solution to this problem to comprise intercepting commands from the IP voice communication stack, identifying from the commands a QoS required for the calls, and generating corresponding QoS commands to the QoS Ethernet layer.

Mikkonen teaches a communications system wherein IP flows are intercepted and examined (col 7 – col 8) and identifying from them a QoS requirement that is used to form the connection: "After finding a record matching best to the examined IP flow, the quality of service determinations of this data record are used for the radio flow that is formed" (col 8, lines 20+). It is also noted that Mikkonen, like in applicants invention, teaches associating the information from the data flows with QoS values in a database,

as described on page 8, lines 10+. Further, the Ethernet environment is taught in col 9, line 18.

It would have been obvious, to one of ordinary skill in the art at the time of the invention, to have solved the problems in AAPA associated with having to modify the application programs to make them operable with the QoS Ethernet layer by, instead, using the alternative process of intercepting and examining the commands from the IP voice communication stack and associating them with a QoS before sending them to the QoS Ethernet layer (it is noted that AAPA teaches sending information to the QoS Ethernet layer) in light of the teachings of Mikkonen, in order to provide a more efficient manner for providing the required QoS at call setup.

With regard to the following claims (hereinafter, CI), note the following, in addition to the fact that the QoS of the IP flow is defined in accordance with the signaling being taught in col 8, lines 48+ of Mikkonen:

CI 2 - 3: H.323 is taught in page 1, lines 23+ of AAPA; CI 4: H.225 is taught in figure 1 of AAPA, and bearer capability is an obvious type of data flow factor (see col 8, lines 15+ of Mikkonen); CI 5: call signaling and setup is mentioned in page 1 lines 25+ of AAPA; CI 6: conferencing is mentioned on page 1 line 30 of AAPA; CI 7: H.245 is mentioned on page 1, lines 26+ of AAPA; CI 8: note the use of H.245 in figure 1 of AAPA with respect to terminal capabilities; CI 9: RAS is mentioned on page 1, lines 28+; CI 11: see the use of bandwidth in col 8, line 65 of Mikkonen. With regard to claims 12 – 20 and 22, the limitations for a single device are all present with respect to a plurality of the devices which form a system as described above; With regard to claims 23 – 31 and

Art Unit: 2661

33, all of the limitations with respect to these method claims are also present in the system claims as described above.

3. Claims 10, 21, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Applicants Admitted Prior Art (AAPA) in view of U.S. patent 6,587,457 to Mikkonen as applied above, and further in view of U.S. patent 6,363,065 to Thornton et al.

AAPA/Mikkonen teaches the invention as described above. Further, taking into consideration bandwidth when assigning QoS is taught in Col 8, line 65 of Mikkonen. AAPA/Mikkonen do not, however, teach the invention operating in a network environment using a gatekeeper, wherein the intercepted commands comprise ARQ commands. Thornton et al teaches the use of a gatekeeper in an H.323 environment in which ARQ commands are used. Thornton et al also teach the gatekeeper determining if there is sufficient bandwidth to make a call. See col 43 line 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to have applied the invention of AAPA/Mikkonen in a network environment in which a gatekeeper and its associated gateway are used, in light of the teachings of Thornton et al, in order to set the proper QoS parameter for the bandwidth for the communication which is carried over the network.

Response to Arguments

4. Applicant's arguments filed 12/8/03 have been fully considered but they are not persuasive.

On page 3, lines 7+, the applicant argues that "The problems present in the AAPA would not have been available to one of ordinary skill in the art prior to the date of the invention." The examiner respectfully disagrees. On page 3, beginning with line 2, it is stated that, "These and other drawbacks in the prior art are overcome in large part by a system and method according to the present invention" (emphasis added).


Since it has been admitted that applicants statements with respect to the AAPA are prior art, and since one of ordinary skill in the art is assumed to be aware of all related prior art (of which in this case, AAPA is certainly related to the teachings of Mikkonen), the examiner believes that there is sufficient evidence to conclude that the problems present in AAPA *would* have been available to one of ordinary skill in the art prior to the date of the invention. Further, the examiner believes that the statements made by the applicant in the "Description of the Related Art" section alone are sufficient to form a presumption that the problems stated in the AAPA were available to one of ordinary skill in the art prior to the date of the invention, especially when one reads figures 1A (labeled prior art) and 1B (labeled prior art) in conjunction with the teachings of this section.

Conclusion


5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Steven Blount may be reached at the Patent Office between the hours of 9:00 and 5:30, Monday through Friday, at 703-305-039.


A.R. Patel
Primary Examiner

SB


2/23/04